U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-98-001-54201 Office: Vermont Service Center Date: AUG 2 1 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations dismissed an appeal from the decision. The matter is again before the Associate Commissioner on motion to reconsider. The prior decision dismissing the appeal will be affirmed.

The petitioner is a church that seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to serve as a full-time pastor and director of religious studies.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
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> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The director denied the petition finding that the petitioner had failed to establish that: it is a qualifying, non-profit religious organization; the beneficiary is qualified to work as a minister; the beneficiary had two years of continuous experience as a minister; the prospective occupation is a religious occupation; or it had the ability to pay the proffered wage.

The Associate Commissioner, through the Director of the Administrative Appeals Office ("AAO"), affirmed the decision of the director.

On motion to reconsider, counsel stated that the AAO had incorrectly interpreted and applied precedent decisions when rendering its previous decision. Counsel submitted letters from individuals pleading with the Service to approve the petition, photocopied photographs, church bulletins and newsletters, and photocopied bank statements and other financial documents.

8 C.F.R. 103.5(a)(3) requires that a motion for reconsideration state the reasons for reconsideration and be supported by any pertinent precedent decisions. A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The first issue to be examined on motion is whether the beneficiary is qualified to work as a minister. In its previous decision, the AAO held that the petitioner had not established that the beneficiary is qualified as a minister within the meaning of section 101(a)(27)(C) of the Act. The AAO cited Matter of Rhee, 16 I&N Dec. 607 (BIA 1978) and Matter of Hall, 18 I&N Dec. 203 (BIA 1982) to support its decision. On motion, counsel stated that neither of these precedent decisions were similar to the instant case.

As was discussed in the previous decision of the AAO, the petitioner submitted a certificate of ordination awarded to the beneficiary in 1987. The petitioner did not provide any description of what was required of the beneficiary prior to her receipt of this document. The simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of a minister or pastor. See Matter of Rhee, supra. On motion, counsel stated that "as to Rhee, [the beneficiary] was ordained based on her religious training." Neither the petitioner nor counsel submitted any evidence of this "religious training." Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Counsel did not specify what her concerns with Matter of Hall were.

Counsel also argued that, pursuant to Matter of Varughese, 17 I&N 399 (BIA 1980), the petitioner submitted sufficient evidence of the beneficiary's qualifications as a minister. Matter of Varughese discussed what evidence could be presented by a minister seeking admission into the United States when that minister was trained

and/or ordained overseas. In the instant case, the beneficiary received her certificate of ordination here in the United States. As was discussed above, this certificate is not sufficient evidence of the beneficiary's qualifications as a minister.

The next issue to be examined is whether the beneficiary had two years of continuous work experience as a minister. As was discussed in the previous decision of the AAO, the petitioner did not state the terms of the beneficiary's alleged past employment and did not provide any documentary evidence of the beneficiary's alleged past employment. On motion, counsel stated that the beneficiary "has worked as a minister since 1986 . . . During this time, she has received no salary; however, all of her needs have been met." Counsel argued that because the petitioner took care of the beneficiary's needs, the beneficiary was employed by the petitioner during the two-year period prior to filing. Counsel cited Matter of Hall, supra., Matter of Varughese, supra., Matter of Bennett, 19 I&N Dec. 21 (BIA 1984) and Matter of Dukpa, 18 I&N Dec. 282 (Dist. Dir. 1981) to support her argument.

Counsel's arguments on motion to reconsider do not address the actual findings of the AAO. The AAO did not discuss whether the terms of the beneficiary's purported remuneration could be considered to constitute past employment. Rather, the AAO determined that the petitioner had not disclosed what, if any, remuneration the beneficiary might have received during the qualifying period. Also, the AAO found that the petitioner had not documented any past employment by the beneficiary. On motion, counsel did not address these issues. As such, counsel did not establish that the previous decision of the AAO was incorrect based on the evidence of record.

Counsel also disputed the other findings of the AAO. Counsel did not, however, provide any precedent decisions to support her arguments and did not establish that the AAO's previous decision was incorrect based on the evidence of record at the time of the initial decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The decision dated March 7, 2000, is affirmed. The petition is denied.